

court asserting five common law causes of action against JBS including negligence, fraudulent and intentional misrepresentation, and wrongful death, and survival. *Id.* at *2. JBS removed the case asserting federal question and diversity jurisdiction. *Id.* Pertinent to the Court’s analysis here, JBS in *Benjamin* argued that federal question existed under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). After a thorough analysis, the court denied JBS’s *Grable* arguments and ordered the case remanded to state court concluding that:

- “[A] complaint that asserts a state law claim based on the alleged violation of federal regulations is insufficient to necessarily raise a federal issue.” *Benjamin*, CV 20-2594, 2021 WL 308133, at *3, attached as Exhibit 1.A.
- “[T]he complaint is rooted in tort law and refers only to OSHA and CDC *guidance*. Therefore, we conclude that the fact that the Complaint references OSHA and CDC guidelines is insufficient to ‘necessarily raise’ a federal issues as required under the first prong of *Grable*.” *Id.* (emphasis as in original).
- “[N]o statutory or regulatory language is at issue . . . [t]herefore Defendants have not met their burden of showing that any federal issue is actually disputed.” *Id.* at *4.
- “We therefore conclude that the mere existence of the Food Supply Chain Order does not convert Plaintiff’s state law tort claims against his employer and its affiliates into a ‘substantial’ federal issue.” *Id.*
- “[W]e will not risk potentially eviscerating the federal-state balance by asserting federal question jurisdiction over tort claims that arise in the workplace simply because they may involve an employer’s response to COVID-19.” *Id.* at *5.

In light of the Pennsylvania ruling granting remand in the face of issues and arguments almost identical to those before the Court here, Plaintiffs respectfully ask the Court to take judicial notice of this recent order and to consider it as persuasive authority in the analysis on Plaintiffs’ motion to remand and in opposition to Defendants’ motion to dismiss. For these

reasons, and in addition to all arguments previously raised, Plaintiffs respectfully ask this Court to remand this matter to state court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading has been electronically filed through the Court's CM/ECF system, which will send notification of electronic filing to all counsel of record on April 5, 2021.

/s/ Joseph McGowin

Joseph McGowin